

**ASSEMBLY BILL**

**No. 2789**

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**Introduced by Committee on Banking and Finance (Nava (Chair),  
Evans, Fong, Fuentes, Mendoza, Ruskin, Swanson, and Torres)**

March 9, 2010

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An act to repeal and add Chapter 14 (commencing with Section 1800) of, and to repeal Chapter 14A (commencing with Section 1851) of, Division 1 of, and to repeal Division 16 (commencing with Section 33000) of, the Financial Code, relating to money transmission.

LEGISLATIVE COUNSEL'S DIGEST

AB 2789, as introduced, Committee on Banking and Finance. Money transmission.

Existing law provides for the regulation and licensure by the Commissioner of Financial Institutions of money transmitters, issuers of travelers checks, and sellers of payment instruments.

This bill would repeal those provisions and enact the Money Transmission Act, which would provide for the regulation and licensure by the commissioner of persons in the business of money transmission, defined to mean the selling or issuing of payment instruments or stored value and the receiving of money for transmission. The bill would prohibit a person from engaging in the business of money transmission in California or advertising, soliciting, or holding itself out as providing money transmission unless licensed by the commissioner. The bill would provide that only a corporation may be licensed to engage in the business of money transmission. The bill would require specified information to be included in an application for a license. The bill would authorize the commissioner to conduct an examination of an applicant, at the applicant's expense, and would require the commissioner to

approve an application for a license if the commissioner makes specified findings, including that the applicant has adequate net worth and is competent to engage in the business of receiving money for transmission. The bill would require licensees to file audit reports with commissioner within 90 days after the end of each fiscal year. The bill would impose various fees and would require the commissioner to levy assessments on licensees for the purposes of administering these provisions regulating money transmission. The bill would establish requirements in order for a licensee to appoint an agent to conduct money transmission on behalf of the licensee. The bill would require a licensee to maintain specified eligible securities. The bill would require a licensee to provide specified notices and disclosures to customers, including a notice relative to a customer's right to a refund, disclosures relating to rates of exchange, a notice indicating that payment instruments are not insured, and a notice providing information on making complaints to the commissioner against a licensee. The bill would require licensees to maintain certain financial records for a 3-year period. The bill would authorize the commissioner to suspend or revoke a license if the commissioner finds that a licensee or agent of a licensee has, among other things, violated the provisions of the act or engaged in fraud or unsound practices and would authorize the commissioner to assess specified civil penalties against a person that violates these provisions. The bill would also make it a crime for a person to engage in the business of money transmission without a license or for a person to intentionally make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under these provisions. By establishing new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 14 (commencing with Section 1800) of
- 2 Division 1 of the Financial Code is repealed.

1 SEC. 2. Chapter 14 (commencing with Section 1800) is added  
2 to Division 1 of the Financial Code, to read:

3  
4 CHAPTER 14. MONEY TRANSMISSION ACT

5  
6 Article 1. General Provisions

7  
8 1800. This chapter shall be known and may be cited as the  
9 Money Transmission Act.

10 1801. The Legislature finds and declares all of the following:

11 (a) Money transmission businesses conduct a significant amount  
12 of business in this state and technological advances are occurring  
13 in the provision of money transmission services.

14 (b) Persons who use money transmission businesses in this state  
15 use those businesses for, among other purposes, paying for the  
16 necessities of life and transmitting money to family members.

17 (c) The failure of money transmission businesses to fulfill their  
18 obligations would cause loss to consumers, disrupt the payments  
19 mechanism in this state, undermine public confidence in financial  
20 institutions doing business in this state, and adversely affect the  
21 health, safety, and general welfare of persons in this state.

22 (d) To protect the interests of consumers of money transmission  
23 businesses in this state, to maintain public confidence in financial  
24 institutions doing business in this state, and to preserve the health,  
25 safety, and general welfare of the people of this state, it is necessary  
26 to regulate money transmission businesses in this state.

27 1802. It is the intent of the Legislature that the provisions of  
28 this act accomplish all of the following:

29 (a) Protect the interests of persons in this state who use money  
30 transmission services.

31 (b) Provide for the safe and sound conduct of the business of  
32 licensees.

33 (c) Maintain public confidence in licensees.

34 1803. For purposes of this chapter, the following definitions  
35 shall apply:

36 (a) "Affiliate," when used with respect to a specified person,  
37 means any person controlling, controlled by, or under common  
38 control with, such specified person, directly or indirectly through  
39 one or more intermediaries. For purposes of subdivision (r), a  
40 specified person is affiliated with another person if that person

controls, is controlled by, or under common control through the ownership directly or indirectly of shares or equity securities possessing more than 50 percent of the voting power of that specified person.

(b) “Agent” means a person that provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person. However, “agent” does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(c) “Applicant” means a person that files an application for a license or for acquisition of control of a licensee under this chapter.

(d) “Average daily outstanding” means the amount of outstanding money transmission obligations in California at the end of each day in a given period of time, added together, and divided by the total number of days in that period of time.

(e) “Branch office” means any office in this state of a licensee or agent at which the licensee receives money or monetary value to provide money transmission, either directly or through an agent.

(f) “Business day” means one of the following:

(1) When used with respect to any act to be performed in this state, any day other than Saturday, Sunday, or any other day that is provided for as a holiday in the Government Code.

(2) When used with respect to any act to be performed in any jurisdiction other than this state, any day other than a day that is a legal holiday under the laws of that jurisdiction.

(g) “Commissioner” means the Commissioner of Financial Institutions.

(h) “Control” has the meaning set forth in Section 700.

(i) “Day” means calendar day.

(j) “In California” means physically located in California, or with, to, or from persons located in California.

(k) “Issue” and “issuer” mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the California Commercial Code and is liable for payment. With regard to stored value, “issue” and “issuer” mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

(l) “Licensee” means a corporation licensed under this chapter.

1 (m) “Monetary value” means a medium of exchange, whether  
2 or not redeemable in money.

3 (n) “Money” means a medium of exchange that is authorized  
4 or adopted by the United States or a foreign government. The term  
5 includes a monetary unit of account established by an  
6 intergovernmental organization or by agreement between two or  
7 more governments.

8 (o) “Money transmission” means any of the following:

9 (1) Selling or issuing payment instruments.

10 (2) Selling or issuing stored value.

11 (3) Receiving money for transmission.

12 (p) “Outstanding,” with respect to payment instruments and  
13 stored value, means issued or sold by the licensee in the United  
14 States and not yet paid by the licensee, or issued or sold on behalf  
15 of the licensee in the United States by its agent and reported as  
16 sold, but not yet paid by the licensee. “Outstanding,” with respect  
17 to receiving money for transmission means all money or monetary  
18 value received in the United States for transmission by the licensee  
19 or its agents but not yet paid to the beneficiaries or refunded to the  
20 person from whom the money or monetary value was received.  
21 All outstanding money transmission of a licensee is and shall  
22 remain a liability of the licensee until it is no longer outstanding.

23 (q) “Payment instrument” means a check, draft, money order,  
24 traveler’s check, or other instrument for the transmission or  
25 payment of money or monetary value, whether or not negotiable.  
26 The term does not include a credit card voucher, letter of credit,  
27 or any instrument that is redeemable by the issuer for goods or  
28 services provided by the issuer or its affiliate.

29 (r) “Person” means an individual, corporation, business trust,  
30 estate, trust, partnership, proprietorship, syndicate, limited liability  
31 company, association, joint venture, government, governmental  
32 subdivision, agency or instrumentality, public corporation or joint  
33 stock company, or any other organization or legal or commercial  
34 entity, provided, however, that “person,” when used with respect  
35 to acquiring control of or controlling a specified person, includes  
36 any combination of two or more persons acting in concert.

37 (s) “Receiving money for transmission” or “money received for  
38 transmission” means receiving money or monetary value in the  
39 United States for transmission within or outside the United States

1 by electronic or other means. The term does not include sale or  
2 issuance of payment instruments and stored value.

3 (t) “Record” means information that is inscribed on a tangible  
4 medium or that is stored in an electronic or other medium and is  
5 retrievable in perceivable form.

6 (u) “State” means a state of the United States, the District of  
7 Columbia, Puerto Rico, the United States Virgin Islands, or any  
8 territory or insular possession subject to the jurisdiction of the  
9 United States.

10 (v) “Stored value” means monetary value representing a claim  
11 against the issuer that is stored on an electronic or digital medium  
12 and evidenced by an electronic or digital record, and that is  
13 intended and accepted for use as a means of redemption or payment  
14 for goods or services. The term does not include a credit card  
15 voucher, letter of credit, or any stored value that is redeemable by  
16 the issuer for goods or services provided by the issuer or its  
17 affiliate.

18 (w) “Travelers check” means an instrument that meets all of  
19 the following:

20 (1) Is designated on its face by the term “travelers check” or by  
21 any substantially similar term or is commonly known and marketed  
22 as a traveler’s check.

23 (2) Contains a provision for a specimen signature of the  
24 purchaser to be completed at the time of purchase.

25 (3) Contains a provision for a countersignature of the purchaser  
26 to be completed at the time of negotiation.

## 27 28 Article 2. Exemptions 29

30 1805. This chapter does not apply to the following:

31 (a) The United States or a department, agency, or instrumentality  
32 thereof, including any Federal Reserve Bank and any federal home  
33 loan bank.

34 (b) Money transmission by the United States Postal Service or  
35 by a contractor on behalf of the United States Postal Service.

36 (c) A state, county, city, or any other governmental agency or  
37 governmental subdivision of a state.

38 (d) A commercial bank or industrial bank, the deposits of which  
39 are insured by the Federal Deposit Insurance Corporation or its  
40 successor, or any foreign (other nation) bank that is licensed under

1 Article 3 (commencing with Section 1750) of Chapter 13.5 or that  
2 is authorized under federal law to maintain a federal agency or  
3 federal branch office in this state; a banking holding company  
4 organized pursuant to the Bank Service Corporation Act (12 U.S.C.  
5 Secs. 1861–1867, incl.); a trust company licensed pursuant to  
6 Section 401 or a national association authorized under federal law  
7 to engage in a trust banking business; an association or federal  
8 association, as defined in Section 5102 the deposits of which are  
9 insured by the Federal Deposit Insurance Corporation or its  
10 successor; and any federally or state chartered credit union the  
11 member accounts of which are insured or guaranteed as provided  
12 in Section 14858.

13 (e) Electronic funds transfer of governmental benefits for a  
14 federal, state, county, or governmental agency by a contractor on  
15 behalf of the United States or a department, agency, or  
16 instrumentality thereof, or a state or governmental subdivision,  
17 agency, or instrumentality thereof.

18 (f) A board of trade designated as a contract market under the  
19 federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or  
20 a person that, in the ordinary course of business, provides clearance  
21 and settlement services for a board of trade to the extent of its  
22 operation as or for such a board.

23 (g) A person that provides clearance or settlement services  
24 pursuant to a registration as a clearing agency or an exemption  
25 from registration granted under the federal securities laws to the  
26 extent of its operation as such a provider.

27 (h) An operator of a payment system to the extent that it provides  
28 processing, clearing, or settlement services, between or among  
29 persons excluded by this section, in connection with wire transfers,  
30 credit card transactions, debit card transactions, stored-value  
31 transactions, automated clearing house transfers, or similar funds  
32 transfers, to the extent of its operation as such a provider.

33 (i) A person registered as a securities broker-dealer under federal  
34 or state securities laws to the extent of its operation as such a  
35 broker-dealer.

36 (j) A person listed under subdivision (d) is exempted from all  
37 the provisions of this chapter, except Sections 1827 and 1828.

38 1806. (a) The commissioner may, by regulation or order, either  
39 unconditionally or upon specified terms and conditions or for  
40 specified periods, exempt from this chapter any person or

1 transaction or class of persons or transactions, if the commissioner  
2 finds such action to be in the public interest and that the regulation  
3 of such persons or transactions is not necessary for the purposes  
4 of this chapter.

5 (b) For purposes of issuing an exemption pursuant to subdivision  
6 (a) for stored value, the commissioner may consider whether the  
7 stored value is accepted as payment for a limited scope of goods  
8 and services that can be clearly distinguished by (1) their location  
9 in the same premises or a limited local area, or (2) their close  
10 financial or business relationship with the issuer. These are not  
11 the exclusive grounds upon which an exemption may be based.

### 12 Article 3. Licenses

13  
14  
15 1810. (a) A person shall not engage in the business of money  
16 transmission in this state, or advertise, solicit, or hold itself out as  
17 providing money transmission in this state, unless the person is  
18 licensed under this chapter or is an agent of a person licensed under  
19 this chapter.

20 (b) A license under this chapter is not transferable or assignable.  
21 1811. (a) No person other than a corporation may apply for  
22 or be issued a license.

23 (b) No person other than the following may be issued a license:

24 (1) A corporation organized under the laws of this state.

25 (2) A corporation, other than a corporation organized under the  
26 laws of this state, that is qualified to transact intrastate business in  
27 this state under Chapter 21 (commencing with Section 2100) of  
28 Division 1 of Title 1 of the Corporations Code.

29 1812. (a) In this section, “material litigation” means litigation  
30 that according to United States generally accepted accounting  
31 principles is significant to an applicant’s or a licensee’s financial  
32 health and would be required to be disclosed in the applicant’s or  
33 licensee’s annual audited financial statements, report to  
34 shareholders, or similar records.

35 (b) An applicant for licensure under this chapter shall pay to  
36 the commissioner a nonrefundable fee of five thousand dollars  
37 (\$5,000).

38 (c) An applicant for a license under this chapter shall do so in  
39 a form and in a medium prescribed by the commissioner by order



1 or regulation. The application shall state or contain all of the  
2 following:

3 (1) The legal name and residential business address of the  
4 applicant and any fictitious or trade name used by the applicant in  
5 conducting its business.

6 (2) A list of any criminal convictions of the applicant and any  
7 material litigation in which the applicant has been involved in the  
8 10-year period next preceding the submission of the application.

9 (3) A description of any money transmission services previously  
10 provided by the applicant and the money transmission services  
11 that the applicant seeks to provide in this state.

12 (4) A list of the applicant's proposed agents and the locations  
13 in this state where the applicant and its agents propose to engage  
14 in money transmission.

15 (5) A list of other states in which the applicant is licensed to  
16 engage in money transmission and any license revocations,  
17 suspensions, or other disciplinary action taken against the applicant  
18 in another state.

19 (6) Information concerning any bankruptcy or receivership  
20 proceedings affecting the licensee.

21 (7) A sample form of payment instruments or instruments upon  
22 which stored value is recorded, if applicable.

23 (8) A sample form of receipts for receipts of money transmission  
24 transactions.

25 (9) The name and address of any bank through which the  
26 applicant's payment instruments and stored value will be paid.

27 (10) A description of the source of money and credit to be used  
28 by the applicant to provide money transmission services.

29 (11) The date of the applicant's incorporation or formation and  
30 the state or country of incorporation or formation.

31 (12) A certificate of good standing from the state or country in  
32 which the applicant is incorporated or formed.

33 (13) A description of the structure or organization of the  
34 applicant, including any parent or subsidiary of the applicant, and  
35 whether any parent or subsidiary is publicly traded.

36 (14) The legal name, any fictitious or trade name, all business  
37 and residential addresses, and the employment, in the 10-year  
38 period next preceding the submission of the application, of each  
39 executive officer, manager, director, or person that has control, of  
40 the applicant, and the education background for each such person.

1 (15) A list of any criminal convictions and material litigation  
2 in which any executive officer, manager, director, or person in  
3 control, of the applicant has been involved in the 10-year period  
4 next preceding the submission of the application.

5 (16) A copy of the applicant's audited financial statements for  
6 the most recent fiscal year and, if available, for the two-year period  
7 next preceding the submission of the application.

8 (17) A copy of the applicant's unconsolidated financial  
9 statements for the current fiscal year, whether audited or not, and,  
10 if available, for the two-year period next preceding the submission  
11 of the application.

12 (18) If the applicant is publicly traded, a copy of the most recent  
13 report filed with the United States Securities and Exchange  
14 Commission under Section 13 of the federal Securities Exchange  
15 Act of 1934 (15 U.S.C. Sec. 78m).

16 (19) If the applicant is a wholly owned subsidiary of:

17 (A) A corporation publicly traded in the United States, a copy  
18 of audited financial statements for the parent corporation for the  
19 most recent fiscal year or a copy of the parent corporation's most  
20 recent report filed under Section 13 of the federal Securities  
21 Exchange Act of 1934 (15 U.S.C. Section 78m) and, if available,  
22 for the two-year period next preceding the submission of the  
23 application.

24 (B) A corporation publicly traded outside the United States, a  
25 copy of similar documentation filed with the regulator of the parent  
26 corporation's domicile outside the United States.

27 (20) The name and address of the applicant's registered agent  
28 in this state.

29 (21) The applicant's plan for engaging money transmission  
30 business, including without limitation three years of pro forma  
31 financial statements.

32 (22) Any other information the commissioner requires with  
33 respect to the applicant.

34 (d) The commissioner may waive any of the information  
35 required under subdivision (c) and authorize an applicant to submit  
36 other information.

37 1813. (a) The commissioner may conduct an examination of  
38 the applicant and the applicant shall pay the reasonable cost of the  
39 examination.

1 (b) If the commissioner finds all of the following with respect  
2 to an application for a license, the commissioner shall approve the  
3 application:

4 (1) The applicant has adequate tangible shareholder's equity,  
5 as specified in Section 1820 to engage in the business of receiving  
6 money for transmission and the financial condition of the applicant  
7 is otherwise such that it will be safe and sound for the applicant  
8 to engage in the business of receiving money.

9 (2) The applicant, the directors and officers of the applicant,  
10 that any person which controls the applicant, and the directors and  
11 officers of any person that controls the applicant are of good  
12 character and sound financial standing.

13 (3) The applicant is competent to engage in the business of  
14 receiving money for transmission.

15 (4) The applicant's plan for engaging in the business of receiving  
16 money for transmission affords reasonable promise of successful  
17 operation.

18 (5) It is reasonable to believe that the applicant, if licensed, will  
19 engage in the business of receiving money for transmission and  
20 will comply with all applicable provisions of this chapter and of  
21 any regulation or order issued under this chapter.

22 (c) The commissioner shall deny an application for a license if  
23 her of she finds, after notice and a hearing, that the requirements  
24 of subdivision (b) have not been satisfied.

25 1814. (a) Before any corporation is issued a license, the  
26 corporation shall file with the commissioner, in such form as the  
27 commissioner may by regulation or order require, an appointment  
28 irrevocably appointing the commissioner to be the corporation's  
29 attorney to receive service of any lawful process in any noncriminal  
30 judicial or administrative proceeding against the corporation, or  
31 any of its successors, that arises under this chapter or under any  
32 regulation or order issued under this chapter after such appointment  
33 has been filed, with the same force and validity as if served  
34 personally on the corporation or its successor, as the case may be.

35 (b) Service may be made by leaving a copy of the process at  
36 any office of the commissioner, but that service is not effective  
37 unless (1) the party making that service, who may be the  
38 commissioner, sends notice of service and a copy of the process  
39 by registered or certified mail to the party served at its last address  
40 on file with the commissioner, and (2) an affidavit of compliance

1 with this section by the party making service is filed in the case  
2 on or before the return date, if any, or within such further time as  
3 the court, in the case of a judicial proceeding, or the administrative  
4 agency, in the case of an administrative proceeding, allows.

5 (c) The provisions of this section are in addition, and not in  
6 limitation of, other provisions of law relating to service of process.

7 1815. (a) No person shall, directly or indirectly, acquire control  
8 of a licensee unless the commissioner has first approved, in writing,  
9 the acquisition of control. An application to acquire control of a  
10 licensee shall be in writing, under oath, and in a form prescribed  
11 by the commissioner. The application shall contain that information  
12 which the commissioner may require.

13 (b) The commissioner shall not approve the application unless  
14 the commissioner finds all of the following:

15 (1) The applicant and all of the officers and directors of the  
16 applicant are of good character and sound financial standing.

17 (2) The applicant is competent to engage in the business of  
18 money transmission.

19 (3) It is reasonable to believe that, if the applicant acquires  
20 control of the licensee, the applicant and the licensee will comply  
21 with all applicable provisions of this chapter and any regulation  
22 or order issued under this chapter.

23 (4) The applicant's plans, if any, to make any major change in  
24 the business, corporate structure, or management of the licensee  
25 are not detrimental to the safety and soundness of the licensee.

26 (c) For the purposes of subdivision (b), the commissioner may  
27 find an applicant's plan to make major changes in the management  
28 of a licensee is detrimental to the licensee if the plan provides for  
29 a person who is not of good character to become a director or  
30 officer of the licensee. The grounds specified in this subdivision  
31 shall not be deemed to be the only grounds upon which the  
32 commissioner may find, for the purposes of subdivision (b), that  
33 an applicant's plan to make a major change in the management of  
34 a licensee is detrimental to the licensee.

35 (d) If it appears to the commissioner that any person is violating  
36 or failing to comply with this section, the commissioner may direct  
37 the person to comply with this section by an order issued over the  
38 commissioner's official seal.

39 (e) Whenever it appears to the commissioner that any person  
40 has committed or is about to commit a violation of any provision

1 of this section or of any regulation or order of the commissioner  
2 issued pursuant to this section, the commissioner may apply to the  
3 superior court for an order enjoining the person from violating or  
4 continuing to violate this section or that regulation or order, and  
5 for other equitable relief as the nature of the case or interests of  
6 the licensee, the controlling person, the creditors or shareholders  
7 of the licensee or controlling person or the public may require.

8 (f) The commissioner may, for good cause, amend, alter,  
9 suspend, or revoke any approval of a proposal to acquire control  
10 of a licensee issued pursuant to this section.

11 (g) There shall be exempted from the provisions of this section  
12 any transaction which the commissioner by regulation or order  
13 exempts as not being comprehended within the purposes of this  
14 section and the regulation of which he or she finds is not necessary  
15 or appropriate in the public interest or for the protection of a  
16 licensee or the customers of a licensee.

17 (h) The commissioner may conduct an examination of the  
18 applicant and the applicant shall pay the reasonable cost of the  
19 examination.

20 1816. The commissioner may impose on any authorization,  
21 approval, license, or order issued pursuant to this chapter any  
22 conditions that he or she deems reasonable or necessary to the  
23 public interest.

24 1817. (a) As security, each licensee shall deposit and thereafter  
25 maintain on deposit with the Treasurer cash in an amount not less  
26 than, or securities having a market value not less than, such amount  
27 as the commissioner may find and order from time to time as  
28 necessary to secure the faithful performance of the obligations of  
29 the licensee with respect to money transmission. These securities  
30 shall be subject to the approval of the commissioner and shall  
31 consist of interest-bearing bonds, notes, or other obligations of the  
32 United States or any agency or instrumentality thereof, or of the  
33 State of California, or of any city, county, or city and county,  
34 political subdivision or district of the State of California, or that  
35 are guaranteed by the United States or the State of California.

36 (b) So long as a licensee that maintains securities on deposit  
37 with the Treasurer pursuant to this section is solvent, that licensee  
38 shall be entitled to receive any interest paid on the securities.

39 (c) In lieu of the deposit of cash or securities pursuant to  
40 subdivision (a), a licensee may deliver to the commissioner the

1 bond of a surety company, in form and written by a company  
2 satisfactory to the commissioner, in an amount not less than the  
3 amount of the deposit of cash or securities required of the licensee,  
4 conditioned upon the faithful performance of the obligations of  
5 the licensee with respect to money transmission. The commissioner  
6 shall deposit such bond with the Treasurer.

7 (d) A licensee that sells or issues payment instruments or stored  
8 value shall maintain securities on deposit or a bond of a surety  
9 company in an amount of no less than five hundred thousand  
10 dollars (\$500,000) or 50 percent of the average daily outstanding  
11 payment instrument and stored value obligations in California,  
12 whichever is greater; provided that such amount shall not be more  
13 than two million dollars (\$2,000,000).

14 (e) A licensee that engages in receiving money for transmission  
15 shall maintain securities on deposit or a bond of a surety company  
16 in an amount greater than the average daily outstanding obligations  
17 for money received for transmission in California, provided that  
18 such amount shall not be less than two hundred fifty thousand  
19 dollars (\$250,000) nor more than two million dollars (\$2,000,000).

20 (f) The amount of securities on deposit or a bond of a surety  
21 company required to be maintained by subdivisions (d) and (e) are  
22 cumulative.

23 (g) The money and securities deposited with the State Treasurer  
24 pursuant to this section and the proceeds of any bond held by the  
25 State Treasurer pursuant to this section shall constitute a trust fund  
26 for the benefit persons who purchased payment instruments or  
27 stored value from the licensee or its agent, or persons who delivered  
28 to any licensee or its agent money or monetary value for  
29 transmission. Suit to recover on any bond may be brought by any  
30 party aggrieved in a court of competent jurisdiction of any county  
31 in which the licensee has an agent.

32 (h) Securities on deposit or a bond shall cover claims for so  
33 long as the commissioner specifies, but for at least four years after  
34 the licensee ceases to provide services under this chapter in this  
35 state. However, the commissioner may permit the amount of the  
36 security to be reduced or eliminated before the expiration of that  
37 time to the extent the amount of the licensee's payment instruments  
38 or stored-value obligations outstanding, or outstanding money or  
39 monetary value received for transmission, is less than the deposit  
40 or bond. The commissioner may permit a licensee to substitute

1 another form of security acceptable to the commissioner for the  
2 security effective at the time the licensee ceases to provide money  
3 transmissions in this state.

4 1818. Fees shall be paid to, and collected by, the commissioner,  
5 as follows:

6 (a) The fee for filing an application for a license is five thousand  
7 dollars (\$5,000), as provided in subdivision (b) of Section 1812.

8 (b) The fee for filing an application for approval to acquire  
9 control of a licensee is three thousand five hundred dollars  
10 (\$3,500).

11 (c) A licensee shall pay annually on or before July 1, a licensee  
12 fee of two thousand five hundred dollars (\$2,500).

13 (d) A licensee shall pay annually on or before July 1, one  
14 hundred twenty-five dollars (\$125) for each licensee branch office  
15 in this state.

16 (e) A licensee shall pay annually on or before July 1, twenty-five  
17 dollars (\$25) for each agent branch office in this state.

18 (f) Whenever the commissioner examines a licensee or any  
19 agent of a licensee, the licensee shall pay, within 10 days after  
20 receipt of a statement from the commissioner, a fee of seventy-five  
21 dollars (\$75) per hour for each examiner engaged in the  
22 examination plus, if it is necessary for any examiner engaged in  
23 the examination to travel outside this state, the travel expenses of  
24 the examiner.

25 (g) Whenever the commissioner examines an applicant, the  
26 applicant shall pay, within 10 days after receipt of a statement  
27 from the commissioner, a fee of seventy-five dollars (\$75) per  
28 hour for each examiner engaged in the examination plus, if it is  
29 necessary for any examiner engaged in the examination to travel  
30 outside this state, the travel expenses of the examiner.

31 (h) Each fee for filing an application shall be paid at the time  
32 the application is filed with the commissioner. No fee for filing  
33 an application shall be refundable, regardless of whether the  
34 application is approved, denied, or withdrawn.

35 1819. (a) The commissioner may by order or regulation grant  
36 exemptions from this section in cases where the commissioner  
37 finds that the requirements of this section are not necessary or may  
38 be duplicative.

39 (b) In addition to such other reports as may be required pursuant  
40 to Sections 283, 284, and 285, each licensee shall, within 90 days

1 after the end of each fiscal year, or within such extended time as  
2 the commissioner may prescribe, file with the commissioner an  
3 audit report for the fiscal year that shall comply with all of the  
4 following provisions:

5 (1) The audit report shall contain audited financial statements  
6 of the licensee for or as of the end of the fiscal year prepared in  
7 accordance with United States generally accepted accounting  
8 principles and such other information as the commissioner may  
9 require.

10 (2) The audit report shall be based upon an audit of the licensee  
11 conducted in accordance with United States generally accepted  
12 auditing standards and such other requirements as the commissioner  
13 may prescribe.

14 (3) The audit report shall be prepared by an independent certified  
15 public accountant or independent public accountant who is not  
16 unsatisfactory to the commissioner.

17 (4) The audit report shall include or be accompanied by a  
18 certificate of opinion of the independent certified public accountant  
19 or independent public accountant that is satisfactory in form and  
20 content to the commissioner. If the certificate or opinion is  
21 qualified, the commissioner may order the licensee to take such  
22 action as the commissioner may find necessary to enable the  
23 independent or certified public accountant or independent public  
24 accountant to remove the qualification.

25 (c) Each licensee shall, not more than 45 days after the end of  
26 each calendar year quarter, or within a longer period as the  
27 commissioner may by regulation or order specify, file with the  
28 commissioner a report containing all of the following:

29 (1) Financial statements, including balance sheet, income  
30 statement, statement of changes in shareholders' equity, and  
31 statement of cashflows, for, or as of the end of, that fiscal quarter,  
32 verified by two of the licensee's principal officers. The verification  
33 shall state that each of the officers making the verification has a  
34 personal knowledge of the matters in the report and that each of  
35 them believes that each statement on the report is true.

36 (2) For issuers and sellers of payment instruments and stored  
37 value, a schedule of eligible securities owned by the licensee  
38 pursuant to Section 1830.

39 (3) Other information as the commissioner may by regulation  
40 or order require.



1 (d) Each licensee, not more than 45 days after the end of each  
2 calendar year quarter, shall file with the commissioner a report  
3 containing all of the following:

4 (1) The current address of each branch office of the licensee in  
5 this state. If a branch office was opened or closed during the  
6 calendar year quarter, the date it was opened or closed. If a branch  
7 office was relocated during the calendar year quarter, the addresses  
8 of the old and new locations and the date of relocation.

9 (2) The name of each person who acted as an agent in this state  
10 of the licensee during the calendar year quarter and the address  
11 for each agent branch office. If a person was appointed or  
12 terminated as an agent during the calendar year quarter, the date  
13 of appointment or termination. If an agent branch office relocated,  
14 the addresses for the old and new locations and the date of  
15 relocation.

16 (3) The total volume of activities, number of transactions  
17 conducted and outstanding money transmission obligations in  
18 California under this chapter and in the United States in the  
19 calendar year quarter categorized by type of money transmission.  
20 For money received for transmission, a report of the average daily  
21 outstanding transmission liabilities in California, and, if applicable,  
22 a schedule of each foreign country to which money was sent, along  
23 with the total amount of money sent to that foreign country in that  
24 calendar year quarter. For payment instruments and stored value,  
25 a report of the average daily outstanding payment instruments and  
26 stored value liabilities in California in that calendar year quarter.

27 (4) Other information as the commissioner may by regulation  
28 or order require.

29 (e) Each licensee shall file with the commissioner other reports  
30 as and when the commissioner may by regulation or order require.

31 1820. (a) A licensee under this chapter shall maintain tangible  
32 shareholders' equity in an amount determined to be adequate by  
33 the commissioner from time to time, but in no event shall tangible  
34 shareholders' equity be less than five hundred thousand dollars  
35 (\$500,000). "Tangible shareholders' equity" means shareholders'  
36 equity minus intangible assets as determined in accordance with  
37 United States generally accepted accounting principles.

38 (b) The commissioner at any time may require a licensee to  
39 write down any asset held by it to a valuation that will represent  
40 its then fair market value. Any receivable or debt due to a licensee

1 that is past due and unpaid for the period of one year shall be  
2 charged off, unless it is well secured or is in process of collection.

3 (c) The aggregate value of a licensee's accounts receivable,  
4 excluding money transmission receivables, loans or extensions of  
5 credit to any one person, or that person's affiliates, cannot exceed  
6 50 percent of the licensee's tangible shareholders' equity without  
7 the advanced written approval of the commissioner. Whenever  
8 such amount equals or exceeds 20 percent of the licensee's tangible  
9 shareholders' equity, the licensee shall maintain records evidencing  
10 such amount and any security or other source of payment for the  
11 amount owed, and such other records as the commissioner may  
12 require by order or regulation.

13 1821. (a) A licensee shall conduct money transmission in  
14 California under its true name unless it has complied with Chapter  
15 5 (commencing with Section 17900) of Part 3 of Division 7 of the  
16 Business and Professions Code.

17 (b) A licensee may only conduct money transmission in  
18 California under its true name unless it has obtained advance  
19 approval from the commissioner. A licensee may also use a trade  
20 name or logo, so long as its true name is displayed at the same  
21 time.

22 1822. (a) In addition to the fees provided in Section 1818, the  
23 commissioner shall levy an assessment each fiscal year, on a pro  
24 rata basis, on those licensees that at any time during the preceding  
25 calendar year engaged in the business of money transmission in  
26 California in an amount that is, in his or her judgment, sufficient  
27 to meet the commissioner's expenses in administering the  
28 provisions of this chapter and to provide a reasonable reserve for  
29 contingencies.

30 (b) For licensees that sell or issue payment instruments or stored  
31 value, the amount of the annual assessment on any licensee shall  
32 not exceed the sum of the products determined by multiplying (1)  
33 increments of the aggregate face amount of payment instruments  
34 and stored value issued or sold in California by the licensee,  
35 directly or indirectly through agents, in the calendar year next  
36 preceding the date of such assessment, or by (2) percentages of  
37 the base assessment rate, according to the following table:

38		
39	Aggregate face amount of payment instruments	Percentage of base
40	and stored value sold (in millions)	assessment rate

1	First \$ 1.....	100.0
2	Next \$9.....	25.0
3	Next \$40.....	12.5
4	Next \$50.....	6.0
5	Next \$400.....	3
6	Next \$500.....	2
7	Excess over \$1,000.....	1

8

9 The base assessment rate shall be fixed from time to time by the  
 10 commissioner but shall not exceed one dollar (\$1) per one thousand  
 11 dollars (\$1,000) face amount of payment instruments and stored  
 12 value sold.

13 (c) For licensees receiving money for transmission, the basis of  
 14 the apportionment of the assessment among the licensees assessed  
 15 shall be the proportion that the total amount of money received  
 16 for transmission by the licensee in California bears in relation to  
 17 the total amount of money received for transmission by all licensees  
 18 in California, as shown by the reports of licensees to the  
 19 commissioner for the preceding calendar year. The assessment  
 20 rate shall be fixed from time to time by the commissioner but shall  
 21 not exceed one dollar (\$1) per one thousand dollars (\$1,000) of  
 22 transmission money received by the licensee.

23 (d) The commissioner shall notify each licensee by mail of the  
 24 amount levied against it. The licensee shall pay the amount levied  
 25 within 20 days. If payment is not made to the commissioner within  
 26 that time, the commissioner shall assess and collect, in addition to  
 27 the annual assessment, a penalty of 5 percent of the assessment  
 28 for each month or part thereof that the payment is delinquent.

29

30

#### Article 4. Agents

31

32 1825. (a) In this section, “remit” means to make direct  
 33 payments of money to a licensee or its representative authorized  
 34 to receive money or to deposit money in a bank in an account  
 35 specified by the licensee.

36 (b) No licensee shall appoint or continue any person as agent,  
 37 unless the licensee and the person have made a written contract.  
 38 A written contract between a licensee and an agent shall require  
 39 the agent to operate in full compliance with this chapter.

1 (c) The written contract shall contain each of the following  
2 provisions:

3 (1) That the licensee appoints the person as its agent with  
4 authority to conduct money transmission on behalf of the licensee.

5 (2) That the agent shall make and keep accounts,  
6 correspondence, memoranda, papers, books, and other records as  
7 the commissioner by regulation or order requires and preserve the  
8 records for the time specified by the regulation or order.

9 (3) That all money or monetary value, less fees due agents  
10 provided for and expressly set forth in the written agreement,  
11 received by the agent for money transmission on behalf of the  
12 licensee shall be trust funds owned by and belonging to the licensee  
13 until the time when the money or an equivalent amount are remitted  
14 by the agent to the licensee in accordance with this section.

15 (4) That the money must be remitted in accordance with the  
16 provisions of this chapter.

17 (5) Any other provisions that the commissioner may find to be  
18 necessary to carry out the provisions and purposes of this chapter.

19 (d) An agent shall remit all money owing to the licensee in  
20 accordance with the terms of the contract between the licensee and  
21 the agent.

22 (e) An agent of a licensee shall remit any money, less fees,  
23 received on behalf of the licensee for money transmission as  
24 follows:

25 (1) Within three business days of receipt.

26 (2) In case the aggregate face amount of the money, less fees,  
27 does not in any calendar week exceed ten thousand dollars  
28 (\$10,000), within 10 business days of receipt.

29 (3) Within a period longer than three business days of receipt,  
30 if the agent has previously deposited with, and during such period  
31 maintains on deposit with, an office of an insured bank or of an  
32 insured savings and loan association located in the United States  
33 in an account that is in the sole and exclusive name of the licensee  
34 an amount that, for each day by which such period exceeds three  
35 business days, is not less than the aggregate face amount of money  
36 received on behalf of the licensee for money transmission that the  
37 agent usually sells per day.

38 (4) Within such shorter period as the licensee may provide.

39 (f) An agent may not provide money transmission outside the  
40 scope of activity permissible under the contract between the agent

1 and the licensee. All money or monetary value, less fees, received  
2 by an agent of a licensee shall, from the time when the money is  
3 received by the agent until the time when the money or an  
4 equivalent amount is remitted by the agent to the licensee,  
5 constitute trust funds owned by and belonging to the licensee.

6 (g) An agent may not use a subagent to conduct money  
7 transmissions on behalf of a licensee.

8 (h) Each licensee shall exercise reasonable supervision over its  
9 agents to ensure compliance with applicable laws, rules, and  
10 regulations with respect to money transmission.

11 (i) No agent of a licensee shall, nor shall any licensee cause or  
12 knowingly permit any of its agents to, conduct money transmission  
13 on behalf of the licensee without concurrently receiving money,  
14 monetary value or its equivalent, credit card, or payment  
15 instrument, or a combination of same believed to be valid in an  
16 amount not less than the amount of the money transmission being  
17 provided. In the case of a sale of payment instruments or stored  
18 value to an insured bank, an insured savings and loan association  
19 or an insured credit union, the licensee or agents of the licensee  
20 may receive such amounts the next business day after the sale.

21 (j) If any California agent of a licensee shall commingle any  
22 money or monetary value, less fees, received on behalf of the  
23 licensee for money transmission with any other property owned  
24 or controlled by the agent, all such property shall be impressed  
25 with a trust in favor of the licensee in an amount equal to the  
26 aggregate amount of such money so commingled. No money or  
27 monetary value, less fees, received by any California agent on  
28 behalf of the licensee for money transmission, while held by such  
29 agent, nor any property impressed with a trust pursuant to this  
30 subdivision, shall be subject to attachment, levy of execution, or  
31 sequestration by order of any court, except for the benefit of the  
32 licensee.

33 (k) Each licensee shall be liable as a principal for the money or  
34 monetary value from the time when the money or monetary value  
35 is received by the agent. Each licensee shall be liable as the maker  
36 or drawer on each payment instrument issued or sold by such  
37 licensee.

38 1826. (a) No licensee shall appoint any person as an agent  
39 unless it has conducted a review of the proposed agent's fitness  
40 to act as an agent and has determined that the proposed agent and

1 any persons who control the proposed agent are of good character  
2 and sound financial standing.

3 (b) A licensee shall maintain records of this review for each  
4 agent while the agent is providing money transmission on behalf  
5 of the licensee, and for three years after the relationship with the  
6 agent has terminated.

7 1827. A person may not provide money transmissions on behalf  
8 of a person not licensed under this chapter. A person that engages  
9 in that activity provides money transmissions services to the same  
10 extent as if the person was a licensee, and shall be jointly and  
11 severally liable with the unlicensed person.

12 1828. (a) No agent of a licensee who has actual notice that the  
13 commissioner has suspended or revoked the license of the licensee  
14 or that the commissioner has issued an order taking possession of  
15 the property and business of the licensee shall conduct money  
16 transmission on behalf of the licensee.

17 (b) If any agent of a licensee, after first having actual notice  
18 that the commissioner has suspended or revoked the license of the  
19 licensee or that the commissioner has issued an order taking  
20 possession of the property and business of the licensee, conducts  
21 money transmission on behalf of the licensee, the agent shall be  
22 jointly and severally liable with the licensee for payment of the  
23 money transmission.

#### 24 Article 5. Eligible Securities

25  
26  
27 1830. (a) A licensee shall at all times own eligible securities  
28 having an aggregate value computed in accordance with United  
29 States generally accepted accounting principles of not less than  
30 the aggregate amount of all of its outstanding payment instruments  
31 and stored value obligations issued or sold in the United States  
32 and all outstanding money received for transmission in the United  
33 States.

34 (b) Eligible securities, even if commingled with other assets of  
35 the licensee, are deemed to be held in trust for the benefit of the  
36 purchasers and holders of the licensee's outstanding payment  
37 instrument and stored value obligations, and all senders of  
38 outstanding money received for transmission, in the event of  
39 bankruptcy or receivership of the licensee, or in the event of an  
40 action by a creditor against the licensee who is not a beneficiary

1 of this statutory trust. No eligible securities impressed with a trust  
2 pursuant to this subdivision shall be subject to attachment, levy of  
3 execution, or sequestration by order of any court, except for a  
4 beneficiary of this statutory trust.

5 (c) All outstanding payment instruments and stored value issued  
6 or sold by a licensee or its agent, and all outstanding money  
7 received for transmission by a licensee or its agent, shall remain  
8 a liability of the licensee from the time money or monetary value  
9 is received by the licensee or its agent until the licensee receives  
10 confirmation that such money or monetary value was received by  
11 the beneficiary, or until the outstanding payment instrument or  
12 stored value obligation has been paid, or until the money is  
13 refunded to the customer.

14 (d) A licensee shall maintain a record in the United States of  
15 proof of receipt by the beneficiary or refund to the customer of  
16 money received for transmission.

17 1831. (a) For the purposes of this chapter, the following are  
18 eligible securities:

19 (1) Cash.

20 (2) Any deposit in an insured bank or an insured savings and  
21 loan association or insured credit union.

22 (3) Any bond, note, or other obligation that is issued or is  
23 guaranteed by the United States or any agency of the United States.

24 (4) Any bond, note, or other obligation that is issued or  
25 guaranteed by any state of the United States or by any  
26 governmental agency of or within any state of the United States  
27 and that is assigned an eligible rating by an eligible securities rating  
28 service.

29 (5) Any bankers acceptance that is eligible for discount by a  
30 federal reserve bank.

31 (6) Any commercial paper that is assigned an eligible rating by  
32 an eligible rating securities service.

33 (7) Any bond, note, or other obligation or preferred stock that  
34 is assigned an eligible rating by an eligible securities rating service.

35 (8) Any share of an investment company that is an open-end  
36 management company, that is registered under the Investment  
37 Company Act of 1940 (12 U.S.C. Sec. 80a-1, et seq.), that holds  
38 itself out to investors as money market fund, and that operates in  
39 accordance with all provisions of the Investment Company Act of  
40 1940, and the regulations of the Securities and Exchange

1 Commission applicable to money market funds, including Section  
2 270.2a-7 of the regulations of the Securities and Exchange  
3 Commission (17 C.F.R. Sec. 270.2a-7).

4 For purposes of this paragraph and paragraph (9), “investment  
5 company,” “management company,” and “open-end” have the  
6 meanings set forth in Sections 3, 4, and 5, respectively, of the  
7 Investment Company Act of 1940 (12 U.S.C. Secs. 80a-4, and  
8 80a-5, respectively).

9 (9) Any share of an investment company that is an open-end  
10 management company, that is registered under the Investment  
11 Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that  
12 invests exclusively in securities that constitute eligible securities.

13 (10) Any account due to any licensee from any agent on account  
14 of the receipt of money on behalf of the licensee for money  
15 transmission by the agent, if the account is current and not past  
16 due or otherwise doubtful of collection.

17 (11) Any other security or class of securities that the  
18 commissioner has by regulation or order declared to be eligible  
19 securities.

20 (b) For the purposes of this section, “value” means the  
21 following:

22 (1) When used with respect to an eligible security owned by a  
23 licensee of the type described in paragraph (10) of subdivision (a),  
24 net carrying value as determined in conformity with United States  
25 generally accepted accounting principles.

26 (2) The following when used with respect to any other eligible  
27 security owned by a licensee:

28 (A) In case the practice and policy of the licensee is to hold  
29 eligible securities to maturity, net carrying value as determined in  
30 conformity with United States generally accepted accounting  
31 principles.

32 (B) In any other case, market value.

33 1832. (a) In computing for purposes of Section 1831 the  
34 aggregate value of eligible securities owned by a licensee, all of  
35 the following shall be excluded:

36 (1) The value of any eligible security if and to the extent that  
37 the value of the eligible security, when combined with the  
38 aggregate value of all other eligible securities owned by the  
39 licensee that are issued or guaranteed by the same person or by  
40 any affiliate of the same person by whom the eligible security is



1 issued or guaranteed, exceeds 10 percent of the aggregate value  
2 of all eligible securities owned by the licensee.

3 (2) The portion of the aggregate value of all eligible securities  
4 of the type described in paragraph (10) of subdivision (a) of Section  
5 1831 that exceeds 25 percent of the aggregate value of all eligible  
6 securities owned by the licensee; and that portion of the aggregate  
7 value of agent receivables from any one person that exceeds 10  
8 percent of the aggregate value of all eligible securities owned by  
9 the licensee, or any higher percentage that the commissioner may  
10 approve for the licensee, up to a maximum of 20 percent.

11 (b) Subdivision (a) shall not be deemed to require the exclusion  
12 of the value of any of the following eligible securities, and each  
13 of the following eligible securities shall be exempted from the  
14 limitations of subdivision (a):

15 (1) The following eligible securities:

16 (A) Cash.

17 (B) Any deposit in an United States insured bank or an United  
18 States insured savings and loan association or United States insured  
19 credit union.

20 (C) Any bond, note, or other obligation for the payment of which  
21 the full faith and credit of the United States are pledged.

22 (2) Any eligible security that the commissioner, in view of the  
23 financial condition of the obligor or issuer and such other factors  
24 as may in the opinion of the commissioner be relevant, finds to be  
25 of such quality that exclusion of the value of such eligible security  
26 pursuant to subdivision (a) is not necessary for the purposes of  
27 this chapter and which the commissioner by regulation or order  
28 exempts, in whole or in part, from the limitations of subdivision  
29 (a).

30 1833. (a) A licensee shall be deemed to own an eligible  
31 security only if the following apply:

32 (1) The licensee owns the eligible security solely and exclusively  
33 in its own right, both of record and beneficially.

34 (2) The eligible security is not subject to any pledge, lien, or  
35 security interest.

36 (3) The licensee can freely negotiate, assign, or otherwise  
37 transfer the eligible security.

38 (b) Notwithstanding subdivision (a), no licensee shall be deemed  
39 not to own an eligible security solely on account of any of the  
40 following facts, provided that, but for that fact, the licensee would

1 be deemed to own the eligible security under the provisions of  
2 subdivision (a):

3 (1) The fact that the eligible security is owned of record by a  
4 documented nominee of the licensee or by a securities depository.

5 (2) The fact that the licensee has pledged the eligible security  
6 with the United States or any state of the United States to secure  
7 payment by the licensee of transmission money.

8 1834. If the commissioner finds that any eligible security or  
9 class of eligible securities is not of sufficient liquidity or quality  
10 to be eligible securities, the commissioner may by regulation or  
11 order declare the security or class of securities to be ineligible.

12 1835. If the commissioner finds that any security or class of  
13 securities that is not an eligible security is of sufficient liquidity  
14 and quality to be an eligible security, the commissioner may by  
15 regulation or order declare the security or class of securities to be  
16 eligible securities.

17 1836. (a) If the commissioner finds that a rating assigned to  
18 a class of securities by an eligible securities rating service indicates  
19 that the class of securities is of sufficient quality to be eligible  
20 securities, the commissioner may by regulation or order declare  
21 the rating to be an eligible rating.

22 (b) With respect to this chapter “eligible rating” means any  
23 rating assigned to such security or class of securities by such  
24 eligible securities rating service which the commissioner has by  
25 regulation or order declared to be an eligible rating.

26 1837. (a) The commissioner may by regulation or order declare  
27 a securities rating service to be an eligible securities rating service  
28 if the commissioner finds the following with respect to the  
29 securities rating service:

30 (1) It has been continuously engaged in the business of rating  
31 securities for a period of not less than three years.

32 (2) It is competent to rate securities and is nationally recognized  
33 for rating securities in a competent manner.

34 (3) It publishes its ratings of securities on a nationwide basis.

35 (b) With respect to this chapter “eligible securities rating  
36 service” means any securities rating service that the commissioner  
37 by regulation or order declared to be an eligible security ratings  
38 service.

Article 6. Consumer Disclosures

1840. (a) (1) Each licensee shall file with the commissioner a certified copy of every receipt form used by it or by its agent for receiving money for transmission prior to its first use. No licensee or its agent shall use any receipt, a certified copy of which has not been filed with the commissioner, or use a receipt that the commissioner has deemed not to be in compliance pursuant to paragraph (2).

(2) If the commissioner determines, within 10 business days of the filing date of a receipt, that the receipt does not comply with the requirements of this section or Sections 1842 and 1843, the commissioner shall notify the licensee in writing that the receipt is not in compliance with those requirements.

(b) Notwithstanding subdivision (a), before a new licensee issues its first receipt to a customer, it shall file with the commissioner a certified copy of the receipt forms to be used by it or its agents for receiving money for transmission. The new licensee shall not use the receipt forms until approved by the commissioner. For purposes of this subdivision, a new licensee is a licensee that has not been previously licensed by the commissioner as a money transmitter or has not previously received money for transmission in California.

(c) If a receipt is required by this chapter to be in English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(d) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars (\$50) for each violation. This provision is in addition to any other enforcement provisions that may apply to such a violation.

(e) If any licensee or its agent uses a receipt form, a certified copy of which has not been filed with the commissioner, the licensee shall be liable for the acts of its agent whether or not the licensee authorized the agent to use that form.

(f) The receipt form shall comply with the requirements of Sections 1842 and 1843.

1841. Every licensee or its agent shall forward all money received for transmission or give instructions committing equivalent money to the person designated by the customer within 10 days after receiving that money, unless otherwise ordered by his or her customer.

1842. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all money received for transmission unless any of the following occurs:

(1) The money has been forwarded within 10 days of the date of receipt

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the money from the customer.

(3) The customer instructs the licensee to transmit the money at a time beyond 10 days. If the customer gives instructions as to when the money shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(4) Refund would violate law.

(b) In the case of money received for transmission, a receipt shall be provided by a licensee or its agent to all customers which shall be made available to the customer in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that branch office if other than English. The receipt shall either include or have attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that branch office if other than English in a size equal to at least 10 point bold type, as follows:

#### RIGHT TO REFUND

"You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if \_\_\_\_\_ (name of licensee) does not forward the money received from you within 10 days of the date of its receipt, or does not

1 give instructions committing an equivalent amount of money to the person  
2 designated by you within 10 days of the date of the receipt of the funds from  
3 you unless otherwise instructed by you.

4  
5 If your instructions as to when the moneys shall be forwarded or transmitted  
6 are not complied with and the money has not yet been forwarded or transmitted,  
7 you have a right to a refund of your money.

8  
9 If you want a refund, you must mail or deliver your written request to \_\_\_\_\_  
10 (name of licensee) at \_\_\_\_\_ (mailing address of licensee). If you do not receive  
11 your refund, you may be entitled to your money back plus a penalty of up to  
12 \$1,000 and attorney's fees pursuant to Section 1842 of the California Financial  
13 Code.”

14  
15 (c) A cause of action under this section may be brought in small  
16 claims court if it does not exceed the jurisdiction of that court, or  
17 in any other appropriate court. The customer shall be entitled to  
18 recover each of the following:

19 (1) Any and all money received for transmission, plus any fees  
20 and charges paid by the customer.

21 (2) A penalty in an amount not to exceed one thousand dollars  
22 (\$1,000). The court shall award the prevailing party costs and  
23 attorney's fees.

24 1843. (a) The receipt presented to each customer for money  
25 received for transmission pursuant to subdivision (b) of Section  
26 1842 shall clearly state the rate of exchange for the particular  
27 transaction, if any, the amount of commission or fees, and the net  
28 exchange after all fees and commissions have been deducted. The  
29 receipt shall also state the total amount of money presented by the  
30 customer and the total amount to be delivered to the beneficiary  
31 designated by the customer. These disclosures shall be in English  
32 and in the same language as that principally used by the licensee  
33 or any agent of the licensee to advertise, solicit, or negotiate, either  
34 orally or in writing, at that branch office if other than English.

35 (b) If window and exterior signs concerning the rates of  
36 exchange for money received for transmission are used, they shall  
37 clearly state in English and in the same language principally used  
38 by the licensee or any agent of the licensee to advertise, solicit, or  
39 negotiate, either orally or in writing, at that branch office if other  
40 than English, the rate of exchange for exchanging the currency of

1 the United States for foreign currency. If an interior sign or any  
2 advertising is used that quotes exchange rates, it shall, in addition  
3 to clearly stating the rates of exchange for exchanging the currency  
4 of the United States for foreign currency, also state all commissions  
5 and fees charged on all such transactions.

6 (c) At each branch office, there shall be disclosed the exchange  
7 rates, fees, and commissions charged in English and in the same  
8 language principally used by the licensee or any agent of the  
9 licensee to advertise, solicit, or negotiate, either orally or in writing,  
10 with respect to money received for transmission at that branch  
11 office. At each branch office, there shall be signage clearly  
12 identifying the name of the licensee as well as any trade names  
13 used by the licensee at that branch office.

14 (d) If the customer does not specify at the time the money is  
15 presented to the licensee or its agent the country to which the  
16 money is to be transmitted, the rate of exchange for the transaction  
17 is not required to be set forth on the receipt. If the customer does  
18 specify at the time the money is presented to the licensee or its  
19 agent the country to which the money is to be transmitted but the  
20 specified country's laws require the rate of exchange for the  
21 transaction to be determined at the time the transaction is paid out  
22 to the intended recipient, the rate of exchange for the transaction  
23 is not required to be set forth on the receipt.

24 1844. Each licensee or agent shall prominently post on the  
25 premises of each branch office that issues or sells payment  
26 instruments, and at machines located in this state and operated by  
27 the licensee or agent that issues or sells payment instruments, a  
28 notice clearly stating that payment instruments are not insured by  
29 the federal government, the state government, or any other public  
30 or private entity. This notice shall be printed in English and in the  
31 same language principally used by the licensee or any agent of the  
32 licensee to advertise, solicit, or negotiate, either orally or in writing,  
33 with respect to the purchase of payment instruments. The  
34 information required in this notice shall be clear, legible, and in  
35 letters not less than one-half inch in height. The notice shall be  
36 posted in a conspicuous location in the unobstructed view of the  
37 public within the premises. The licensee shall provide to each of  
38 its agents the notice required by this section. In those locations  
39 operated by an agent, the agent, not the licensee, shall be  
40 responsible for the failure to properly post the required notice.

1     1845. (a) Each licensee or agent shall prominently post on the  
2 premises of each branch office that conducts money transmission  
3 a notice stating that:

4  
5     “If you have complaints with respect to any aspect of the money  
6 transmission activities conducted at this location, you may contact the  
7 California Department of Financial Institutions at its toll-free telephone  
8 number, 1-800-622-0620, by e-mail at [consumer.complaint@dfi.ca.gov](mailto:consumer.complaint@dfi.ca.gov),  
9 or by mail at Department of Financial Institutions, Consumer Services,  
10 1810 13th Street, Sacramento, CA 95811.”  
11

12     (b) The commissioner may by order or regulation modify the  
13 content of the notice required by this section. This notice shall be  
14 printed in English and in the same language principally used by  
15 the licensee or any agent of the licensee to advertise, solicit, or  
16 negotiate either orally or in writing, with respect to money  
17 transmission at that branch office. The information required in this  
18 notice shall be clear, legible, and in letters not less than one-half  
19 inch in height. The notice shall be posted in a conspicuous location  
20 in the unobstructed view of the public within the premises. The  
21 licensee shall provide to each of its agents the notice required by  
22 this section. In those locations operated by an agent, the agent, and  
23 not the licensee, shall be responsible for the failure to properly  
24 post the required notice.

25     1846. (a) No licensee shall sell or issue any form of payment  
26 instrument in California unless a certified copy of the payment  
27 instrument has first been filed with the commissioner. The payment  
28 instrument shall clearly identify the licensee as the issuer.

29     (b) The commissioner may by order or regulation declare that  
30 a form of payment instrument is prohibited if it is misleading in  
31 any material respect or otherwise does not comply with applicable  
32 law.

33     (c) A payment instrument that identifies the agent through which  
34 the licensee sells the payment instrument shall identify the agent  
35 as such and shall identify the licensee at least as conspicuously as  
36 it does the agent.

1 Article 7. Examinations, Special Reports, and Records

2  
3 1850. (a) The commissioner may at any time and from time  
4 to time examine the business and any office, within or outside this  
5 state, of any licensee or any agent of a licensee in order to ascertain  
6 whether that business is being conducted in a lawful manner and  
7 whether all money transmission is properly accounted for.

8 (b) The directors, officers, and employees of any licensee or  
9 agent of a licensee being examined by the commissioner shall  
10 exhibit to the commissioner, on request, any or all of the licensee's  
11 accounts, books, correspondence, memoranda, papers, and other  
12 records and shall otherwise facilitate the examination so far as it  
13 may be in their power to do so.

14 1851. The commissioner may consult and cooperate with other  
15 state or federal money transmission regulators in enforcing and  
16 administering this chapter. They may jointly pursue examinations  
17 and take other official action that they are otherwise empowered  
18 to take.

19 1852. A licensee shall file a report with the commissioner  
20 within five business days after the licensee has reason to know of  
21 the occurrence any of the following events:

22 (a) The filing of a petition by or against the licensee under the  
23 United States Bankruptcy Code (11 U.S.C. Secs. 101-110, incl.)  
24 for bankruptcy or reorganization.

25 (b) The filing of a petition by or against the licensee for  
26 receivership, the commencement of any other judicial or  
27 administrative proceeding for its dissolution or reorganization, or  
28 the making of a general assignment for the benefit of its creditors.

29 (c) The commencement of a proceeding to revoke or suspend  
30 its license in a state or country in which the licensee engages in  
31 business or is licensed.

32 (d) The cancellation or other impairment of the licensee's bond  
33 or other security.

34 (e) A charge or conviction of the licensee or of an executive  
35 officer, manager, director or person in control of the licensee for  
36 a felony.

37 (f) A charge or conviction of an agent for a felony.

38 1853. A licensee that is a money services business under the  
39 regulations adopted pursuant to the United States Bank Secrecy



1 Act (31 C.F.R. Part 103) and the agents of the licensee that are  
2 money services businesses shall comply with those regulations.

3 1854. (a) A licensee shall maintain the following records for  
4 determining its compliance with this chapter for at least three years:

5 (1) A record of each payment instrument or stored-value  
6 obligation sold.

7 (2) A general ledger posted at least monthly containing all asset,  
8 liability, capital, income, and expense accounts.

9 (3) Bank statements and bank reconciliation records.

10 (4) Records of outstanding payment instruments and  
11 stored-value obligations.

12 (5) Records of each payment instrument and stored-value  
13 obligation paid within the three-year period.

14 (6) A list of the last known names and addresses of all of the  
15 licensee's agents and their branch offices.

16 (7) Any other records the commissioner reasonably requires by  
17 order or regulation.

18 (b) The items specified in subdivision (a) may be maintained  
19 in any form of record.

20 (c) Records may be maintained outside this state if they are  
21 made available to the commissioner on seven days' notice that is  
22 sent in a record.

23 (d) If records not required to be maintained in English pursuant  
24 to Section 286 are in a language other than English, the licensee  
25 shall provide records translated into English within seven days'  
26 notice that is sent in a record.

27  
28 Article 8. Enforcement  
29

30 1860. (a) If it appears to the commissioner that a licensee is  
31 violating or failing to comply with any law of this state, the  
32 commissioner may direct the licensee to comply with the law by  
33 an order issued under the commissioner's official seal, or if it  
34 appears to the commissioner that any licensee is conducting its  
35 business in an unsafe or injurious manner, the commissioner may  
36 in like manner direct it to discontinue the unsafe or injurious  
37 practices. The order shall require the licensee to show cause before  
38 the commissioner, at a time and place to be fixed by the  
39 commissioner, as to why the order should not be observed.

(b) If, upon any hearing held pursuant to subdivision (a), the commissioner finds that the licensee is violating or failing to comply with any law of this state or is conducting its business in an unsafe or injurious manner, the commissioner may make a final order directing it to comply with the law or to discontinue the unsafe or injurious practices. A licensee shall comply with the final order unless, within 10 days after the issuance of the order, its enforcement is restrained in a proceeding brought by the licensee.

1861. (a) The commissioner may issue an order suspending or revoking a license, or taking possession of and placing a licensee in receivership, if after notice and an opportunity for hearing, the commissioner finds that:

(1) The licensee is violating this chapter or a regulation adopted or an order issued under this chapter, or a condition of approval issued under this chapter.

(2) The licensee does not cooperate with an examination or investigation by the commissioner.

(3) The licensee engages in fraud, intentional misrepresentation, or gross negligence.

(4) The competence, experience, character, or general fitness of the licensee, or any director, officer, employee, or person in control of a licensee, indicates that it is not in the public interest to permit the person to provide money transmission services.

(5) The licensee engages in an unsafe or unsound practice.

(6) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(7) The licensee does not remove an agent after the commissioner issues and serves upon the licensee a final order including a finding that the agent has violated this chapter.

(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or any person has applied for any such relief under that law against the licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.

(9) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application.

1 (b) In determining whether a licensee is engaging in an unsafe  
2 or unsound practice, the commissioner may consider the size and  
3 condition of the licensee's provision of money transmission  
4 services, the magnitude of the loss, the gravity of the violation of  
5 this chapter, and the previous conduct of the person involved.

6 1862. (a) The commissioner may issue an order suspending  
7 or revoking the designation of an agent if, after notice and an  
8 opportunity for hearing, the commissioner finds that:

9 (1) The agent violated this chapter or a regulation adopted or  
10 an order issued under this chapter.

11 (2) The agent did not cooperate with an examination or  
12 investigation by the commissioner.

13 (3) The agent engaged in fraud, intentional misrepresentation,  
14 or gross negligence.

15 (4) The agent is convicted of a violation of a state or federal  
16 anti-money laundering statute.

17 (5) The competence, experience, character, or general fitness  
18 of the agent, or any director, officer, employee, or person in control  
19 of the agent, indicates that it is not in the public interest to permit  
20 the agent to provide money transmissions.

21 (6) The agent is engaging in an unsafe or unsound practice.

22 (7) The agent has made or caused to be made in any application  
23 or report filed with the commissioner or in any proceeding before  
24 the commissioner, any statement that was at the time and in the  
25 light of the circumstances under which it was made, false or  
26 misleading with respect to any material fact, or has omitted to state  
27 in any of those applications or reports any material fact which is  
28 required to be stated therein.

29 (8) The agent is an agent of a licensee who, because of its  
30 operations and financial condition, is not competent to supervise  
31 and monitor the agent.

32 (9) The agent will not comply with all applicable provisions of  
33 this chapter and of any regulation or order issued under this chapter.

34 (b) In determining whether an agent is engaging in an unsafe  
35 or unsound practice, the commissioner may consider the size and  
36 condition of the agent's provision of money transmission services,  
37 the magnitude of the loss, the gravity of the violation of this chapter  
38 or a rule adopted or order issued under this chapter, and the  
39 previous conduct of the agent.

1 (c) No licensee shall appoint as an agent any person with respect  
2 to whom an order issued under this section is in effect.

3 (d) No person with respect to whom an order issued under this  
4 section is in effect shall become or continue to be an agent of any  
5 licensee.

6 (e) If applicable, the commissioner may disclose to the licensee  
7 criminal history information upon which an order is based.

8 1863. (a) Every order, decision, or other official act of the  
9 commissioner is subject to review in accordance with law.

10 (b) Whenever the commissioner has taken possession of the  
11 property and business of any licensee, the licensee, within 10 days  
12 after that taking, if it deems itself aggrieved thereby, may apply  
13 to the superior court in the county in which the head office of the  
14 licensee is located to enjoin further proceedings. The court, after  
15 citing the commissioner to show cause why further proceedings  
16 should not be enjoined and after a hearing and a determination of  
17 the facts upon the merits, may dismiss the application or enjoin  
18 the commissioner from further proceedings and direct the  
19 commissioner to surrender the property and business to the  
20 licensee.

21 1864. (a) If the commissioner finds that any of the factors set  
22 forth in Section 1861 is true with respect to any licensee and that  
23 it is necessary for the protection of the public interest, the  
24 commissioner may issue an order immediately suspending or  
25 revoking the licensee's license.

26 (b) Within 30 days after the license is suspended or revoked  
27 pursuant to subdivision (a), the licensee may file with the  
28 commissioner an application for a hearing on the suspension or  
29 revocation.

30 (c) If the commissioner fails to commence a hearing within 15  
31 business days after the application is filed with the commissioner  
32 pursuant to subdivision (b) or within a longer period of time agreed  
33 to by the licensee, the suspension or revocation shall be deemed  
34 rescinded.

35 (d) Within 30 days after the hearing, the commissioner shall  
36 affirm, modify, or rescind the suspension or revocation. Otherwise,  
37 the suspension or revocation shall be deemed rescinded.

38 (e) The right of the licensee to petition for judicial review of  
39 the suspension or revocation shall not be affected by the failure of

1 the licensee to apply to the commissioner for a hearing on the  
2 suspension or revocation pursuant to subdivision (b).

3 1865. (a) If the commissioner finds that any of the factors set  
4 forth in Section 1862 is true with respect to any agent and that it  
5 is necessary for the protection of the public interest, the  
6 commissioner may issue an order immediately suspending or  
7 barring that agent from continuing to be or becoming an agent of  
8 any licensee during the period for which that order is in effect.

9 (b) Within 30 days after an order is issued pursuant to  
10 subdivision (a), the licensee or the agent or former agent with  
11 respect to whom the order was issued may file with the  
12 commissioner an application for a hearing on the order.

13 (c) If the commissioner fails to commence a hearing within 20  
14 business days after the application is filed with the commissioner  
15 pursuant to subdivision (b) or within a longer period of time agreed  
16 to by the parties, the suspension or revocation shall be deemed  
17 rescinded.

18 (d) Within 30 days after the hearing, the commissioner shall  
19 affirm, modify, or rescind the order.

20 (e) The right of the licensee or agent or former agent to petition  
21 for judicial review of the order shall not be affected by the failure  
22 of that person to apply to the commissioner for a hearing on the  
23 order pursuant to subdivision (b).

24 1866. The commissioner may assess a civil penalty against a  
25 person that violates this chapter or a regulation adopted or an order  
26 issued under this chapter in an amount not to exceed one thousand  
27 dollars (\$1,000) for each violation or, in the case of a continuing  
28 violation, one thousand dollars (\$1,000) for each day or part thereof  
29 during which the violation continues, plus this state's costs and  
30 expenses for the investigation and prosecution of the matter,  
31 including reasonable attorney's fees.

32 1867. (a) A person that intentionally makes a false statement,  
33 misrepresentation, or false certification in a record filed or required  
34 to be maintained under this chapter or that intentionally makes a  
35 false entry or omits a material entry in such a record is guilty of a  
36 felony.

37 (b) A person that knowingly engages in an activity for which a  
38 license is required under this chapter without being licensed under  
39 this chapter is guilty of a felony.

1 (c) Nothing in this chapter limits the power of the state to punish  
2 any person for any act that constitutes a crime under any statute.  
3 1868. The enforcement provisions of this chapter are in addition  
4 to any other enforcement powers that the commissioner may have  
5 under law.

6  
7 Article 9. Voluntary Surrender of License and Miscellaneous  
8 Provisions  
9

10 1870. Any licensee may surrender its license by filing with the  
11 commissioner the license and a report with any information as the  
12 commissioner requires. The voluntary surrender of the license  
13 shall become effective at the time and upon the conditions as the  
14 commissioner specifies by order.

15 1871. If any provision of this chapter or the application thereof  
16 to any person or circumstances is held invalid, illegal, or  
17 unenforceable, that invalidity, illegality, or unenforceability shall  
18 not affect other provisions or applications of this chapter that can  
19 be given effect without the invalid, illegal, or unenforceable  
20 provision or application, and to this end, the provisions of this  
21 chapter are declared to be severable.

22 1872. (a) A license issued under Chapter 14 (commencing  
23 with Section 1800), Chapter 14A (commencing with Section 1851),  
24 or Division 16 (commencing with Section 33000) that is in effect  
25 immediately before January 1, 2011, shall remain in effect as a  
26 valid license under this chapter.

27 (b) Any person that, prior to January 1, 2011, was not required  
28 to obtain a license under Chapter 14 (commencing with Section  
29 1800), Chapter 14A (commencing with Section 1851), or Division  
30 16 (commencing with Section 33000), but is required to have a  
31 license under this chapter, shall file an application for a license  
32 pursuant to this chapter by July 1, 2011, in order to continue  
33 conducting money transmission in this state directly or through  
34 agents. If the application is timely filed and pending with the  
35 commissioner, that person may continue to conduct money  
36 transmission in this state, until the application has been approved,  
37 abandoned, or denied.

38 SEC. 3. Chapter 14A (commencing with Section 1851) of  
39 Division 1 of the Financial Code is repealed.

1 SEC. 4. Division 16 (commencing with Section 33000) of the  
2 Financial Code is repealed.

3 SEC. 5. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

O